

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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In re SONY BMG CD Technologies Litigation	:	No. 05 CV 9575 (NRB)
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**DEFENDANT SONY BMG MUSIC ENTERTAINMENT'S
AND CLASS COUNSEL'S AGREED MOTION
TO MODIFY THE SETTLEMENT AGREEMENT**

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Class Counsel

At a hearing on January 6, 2006, the Court granted preliminary approval to a settlement of this consolidated class action matter, and ordered that notice be sent to members of the proposed Settlement Class by February 15, 2006. The parties advised the Court at that hearing that, prior to the notice date, they may seek to amend the Settlement Agreement in ways that would be favorable to the Settlement Class. On February 1, 2006, the Court entered a Stipulated Order with several such amendments. The signatories to the Settlement Agreement¹ hereby respectfully request that the Court now enter the attached Stipulated Order, which further modifies the Settlement Agreement in the following manner.:

1. Section III.X., which was added to the Settlement Agreement by the Court's Order of February 1, 2006, is amended to read as follows:

If, in particular instances, SONY BMG cannot, within a reasonable time and at commercially reasonable cost, provide (i) a non-content protected CD with the music on the XCP CD returned pursuant to Section III.B.1, or (ii) MP3 downloads of the music on an XCP CD or a MediaMax CD pursuant to Sections III.B.1, III.E or III.F, then SONY BMG will provide an alternative benefit of equivalent or greater value (with the understanding that one such alternative will be a refund of the demonstrated purchase price of the affected CD or \$15.00), in a form acceptable to Class Counsel, and in consultation with the affected class member(s). If the total number of Settlement Class Members who have filed claims and who are affected by this provision exceeds 500, then SONY BMG will be required to certify to Class Counsel that it cannot provide the requisite replacement CDs or MP3 downloads to these Settlement Class Members, or that the cost of doing so would substantially exceed the cost of providing the alternative benefit. If the total number of Settlement Class Members who have filed claims and who are affected by this provision exceeds 5,000, then Class Counsel will be entitled to receive reasonable documentary evidence in support of SONY BMG's certification. Under no circumstances may SONY BMG provide such an alternative benefit to more than 6,000 Settlement Class Members who file claims that seek solely MediaMax Compensation.

¹ Counsel for defendants First4Internet Ltd. and SunnComm International Inc. have been advised of this motion and do not object to it.

Dated: New York, New York
February 8, 2006

Respectfully submitted,

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Dated: New York, New York
February 6, 2006

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